

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KENNETH FRIEDMAN,

Plaintiff,

v.

QUENTIN BYRNE, et. al.,

Defendants.

3:16-cv-00016-RCJ-WGC

ORDER

I. DISCUSSION

On August 19, 2016, the Court issued an order screening Plaintiff's civil rights complaint brought pursuant to 42 U.S.C. § 1983. (ECF No. 9). Plaintiff has filed a motion to file complaint (ECF No. 6), an *ex parte* motion to extend time to effect service of complaint (ECF No. 7) and a motion for reconsideration (ECF No. 12). Plaintiff asks the Court to reconsider its dismissal of his Count I First Amendment retaliation claim as to defendant David Carpenter and its dismissal of Plaintiff's Count II due process claim without leave to amend.

A motion to reconsider must set forth "some valid reason why the court should reconsider its prior decision" and set "forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision." *Frasure v. United States*, 256 F.Supp.2d 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this Court "(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Sch. Dist. No. 1J v. Acands, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). "A motion for reconsideration is not an avenue to re-litigate the same issues and arguments upon which the court already has ruled." *Brown v.*

1 *Kinross Gold, U.S.A.*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005).

2 Plaintiff asserts that defendant Carpenter “colluded and conspired” with defendant
3 Olivas “to use disciplinary action to perpetuate retaliation.” (ECF No. 12 at 2-3). The
4 addendum to Plaintiff’s complaint details how defendant Carpenter weighed evidence at
5 Plaintiff’s hearing and gave more weight to the defendants’ testimony than to Plaintiff’s
6 witnesses. (See ECF 1-2 at 12). As stated in the Court’s screening order, defendant
7 Carpenter was dismissed because he was only alleged to have fulfilled his routine duties in
8 the disciplinary process after the allegations were filed for allegedly retaliatory purposes. (ECF
9 No. 9 at 4-5). Plaintiff is attempting to re-litigate the same issues and arguments upon which
10 the Court has already ruled. The sufficiency of the process Plaintiff received was the subject
11 of his Count II. (See ECF No. 10 at 8). The Court re-affirms the dismissal of defendant
12 Carpenter from Plaintiff’s Count I First Amendment retaliation claim.

13 Plaintiff next asserts that he must be afforded full and fair due process before suffering
14 the consequences of a disciplinary action. (ECF No. 12 at 4). Plaintiff asserts that he was not
15 given fair notice or an opportunity for witnesses to give full testimony. (*Id.* at 5). No *Wolff*-type
16 due process protections apply, however, unless the result of the hearing is a punishment that
17 impairs a constitutionally cognizable liberty interest as defined in *Sandin v. Connor*, 515 U.S.
18 472 (1995). Plaintiff alleges that he suffered disciplinary action, negative classification, “harsh”
19 custody, transfer, etc. (ECF No. 12 at 4).

20 As stated in the Court’s screening order, Plaintiff has no state-created liberty interest
21 in avoiding transfer or disciplinary segregation, for the court concludes that these punitive
22 sanctions were not atypical hardships under *Sandin*. (See ECF No. 9 at 5:13-15 (citation
23 omitted)). As Plaintiff fails to identify a liberty interest which would trigger *Wolff*-type due
24 process protections, his allegations concerning the deficiencies of the disciplinary proceedings
25 are not enough to state a colorable due process claim. The Court re-affirms the dismissal of
26 Plaintiff’s Count II due process claim.

27 As such, Plaintiff’s motion for reconsideration is denied.

28 **II. MOTION TO FILE AND MOTION TO EXTEND TIME**

1 Plaintiff's motion to file the complaint (ECF No. 6) is denied as moot: Plaintiff's
2 complaint was filed on August 19, 2016. (See ECF No. 10). Plaintiff's motion to extend time
3 to effect service of complaint (ECF No. 7) is denied as Plaintiff's complaint was filed on August
4 19, 2016 and no extension for service is needed as of yet.

5 **III. LEAVE TO AMEND**

6 As Plaintiff filed this motion for reconsideration, the Court will grant him an additional
7 fifteen days from the date of the entry of this order to file any amended complaint. Plaintiff is
8 granted leave to file an amended complaint to cure the deficiencies of the complaint. If
9 Plaintiff chooses to file an amended complaint he is advised that an amended complaint
10 supersedes the original complaint and, thus, the amended complaint must be complete in
11 itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir.
12 1989) (holding that "[t]he fact that a party was named in the original complaint is irrelevant; an
13 amended pleading supersedes the original"); see also *Lacey v. Maricopa Cnty.*, 693 F.3d 896,
14 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice, a plaintiff is not required
15 to reallege such claims in a subsequent amended complaint to preserve them for appeal).
16 Plaintiff's amended complaint must contain all claims, defendants, and factual allegations that
17 Plaintiff wishes to pursue in this lawsuit. Moreover, Plaintiff must file the amended complaint
18 on this Court's approved prisoner civil rights form and it must be entitled "First Amended
19 Complaint."

20 The Court notes that if Plaintiff chooses to file an amended complaint curing the
21 deficiencies of the complaint, as outlined in this order, Plaintiff shall file the amended
22 complaint within fifteen (15) days from the date of entry of this order. If Plaintiff chooses not
23 to file an amended complaint curing the stated deficiencies, this action shall proceed on Count
24 I against defendants Mosely, V. Olivas, R. Olivas, and Byrne only.

25 **III. CONCLUSION**

26 For the foregoing reasons, IT IS ORDERED that Plaintiff's motion for reconsideration
27 (ECF No. 12) is DENIED.

28 IT IS FURTHER ORDERED that Plaintiff's motion to file complaint (ECF No. 6) is

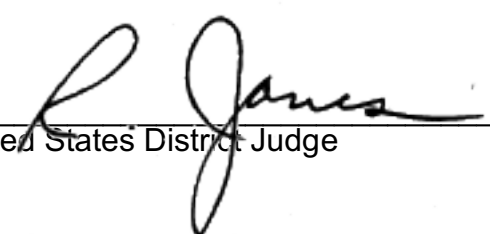
1 DENIED as moot.

2 IT IS FURTHER ORDERED that Plaintiff's ex parte motion to extend time to effect
3 service of complaint (ECF No. 7) is DENIED.

4 IT IS FURTHER ORDERED that if Plaintiff chooses to file an amended complaint curing
5 the deficiencies of his complaint, as outlined in the original screening order, Plaintiff shall file
6 the amended complaint within fifteen (15) days from the date of entry of this order.

7 IT IS FURTHER ORDERED that if Plaintiff chooses not to file an amended complaint
8 curing the stated deficiencies of the complaint, this action shall proceed on Count I against
9 defendants Mosely, V. Olivas, R. Olivas, and Byrne only.

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11 DATED: This 18th day of October, 2016.

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14 United States District Judge
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